S.B.Civil Misc.Appeal No.393/92
The Commissioner, Municipal Council,Udaipur
vs.
Joomaji & ors.

Date of Order: 05.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rakesh Singha for Mr. Rajat Dave for the appellant.
Mr. Jagdish Vyas for the respondents.

Heard learned counsel for the parties.

This appeal is against the award passed by the learned Workmen Compensation Commissioner,Udaipur dated 3.8.1992.

The claimant, wife of applicant(respondent no.1) and mother of applicants no.2 to 8(respondents) was working in the employment with the Municipal Council, Udaipur. While she was discharging her duties of cleaning the roads and lanes, she met with accident of electrocution and because of which she died. She was getting salary of Rs.1225/- per month. The claimants claimed compensation of Rs.82,380/- with penalty as well as interest at the rate of 12% per annum. The Municipal Council, Udaipur admitted in reply the death of the employee but submitted that she died because of electricity current and that was the fault of the electricity department. Therefore, the claimants should have submitted claim against the electricity department and not against the employer. It is also submitted that all service benefits for which the dependent and descendants of the deceased were entitled, have been given to

them. Not only this, one of the family member of the deceased also has been given appointment on compassionate ground. In view of the above it was submitted that the claim petition be dismissed.

The issues were framed and thereafter the learned Workmen Compensation Commissioner held that the employee victim died due to the electrocution while she was discharging her duties under the employment. She was of the age of 40 years and, therefore, the claimants were found entitled to compensation of Rs.73,668/- in place of Rs.82,380/-. The learned Workmen Compensation Commissioner also awarded penalty above 20% of the compensation and awarded 12% interest.

The learned counsel for the appellant submitted that it was fault of the electricity department and, therefore, no claim should have been entertained against the Municipal Council, Udaipur and the claim has wrongly been awarded. It is also submitted that the maximum interest which could have been awarded as per law at the relevant time was 6% only whereas the interest has been awarded at the rate of 12% per annum. It is also submitted that no opportunity of hearing was given by the learned Workmen Compensation Commissioner before imposing penalty of 20%. Therefore, the order is illegal.

The learned counsel appearing for the claimants vehemently submitted that the grounds raised by the appellant are not falling in the

category of substantial questions of law and the factual finding recorded by the learned Workmen Compensation Commissioner is based on the true facts and which cannot be denied by the appellant. Every material was available with the Municipal Board and even if the interest of 12% has been awarded by the learned Workmen Compensation Commissioner, Udaipur then that was just and proper in view of the fact that subsequently the interest amount has been enhanced in the Act itself. It is also submitted that the victim died as back as on 26.7.1991 and more than 15 years have passed. It is also submitted that at this stage, if the amount of interest shall be ordered to be recovered from the respondents, it will be too harsh. It is also submitted that the penalty of only 20% has been imposed in a case where no payment was made to the appellant even after two years from the death of the victim.

I considered the submissions of the learned counsel for the parties and perused the record as well as the facts of the case.

It is clear from the facts of the case that a young lady of the age of 40 years died and she was in the employment with the appellant on salary of Rs.1225/- per month. Her employment cannot be disputed and her death, while she was discharging her duties under the employment, also cannot be disputed, therefore, so far as the factual findings are concerned, I do not find that the learned Workmen Compensation

Commissioner has committed any error.

So far as not giving opportunity of hearing to the employer-appellant before imposing penalty is concerned, this Court is not inclined to remand the matter only for giving the opportunity of hearing toe the appellant and, therefore, the arguments were heard on the question of quantum of penalty.

The learned counsel for the appellant vehemently submitted that since the notice was not given to the appellant and, therefore, the penalty should not have been imposed. So far as the contention of the employer only on the ground that the no notice was given to the appellant for payment of the compensation is concerned, it was the duty of the employer to pay the compensation. The appellant, knowing it well that their own employee died while she was discharging her duties under the employment, did not pay the compensation in time. The amount of penalty awarded , that too of 20%, cannot be said to be excessive. It is a case of no reasonable cause for not making payment by the employer to the dependent of the employee when they themselves have given all other benefits to the dependent of the victim of the service, then there was no reason for withholding the compensation amount. Therefore, the award of penalty to the extent of 20% of the compensation is just and proper.

So far as interest is concerned, it appears that the interest has

been awarded beyond the statutory limit but in the facts and circumstances of the case, I do not find any reason to interfere on this ground also because of the reason that the interest amount is too meagre and has been paid to the poor heirs of the victim of young lady of 40 years.

Therefore, the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.